

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**BOSWELL STAUSS, #159409**

**PETITIONER**

**V.**

**CAUSE NO. 3:14-CV-781-CWR-FKB**

**CAPTAIN DAN SMITH**

**RESPONDENT**

**ORDER**

This matter is before the Court on respondent's motion to dismiss, Docket No. 9, and the Report and Recommendation of the Magistrate Judge. Docket No. 11. The Court did not receive any objections from the petitioner, but the copy of the Report and Recommendation that was sent to the petitioner was returned as undeliverable. Docket No. 12. A copy of the Report and Recommendation was sent to petitioner's last known address. Petitioner has not provided an updated address, although he was directed by the Court to keep the Court informed of any change in address and that the failure to do so could result in dismissal of his case. *See* Docket No. 7.

Out of an abundance of caution, the Court conducted an independent review of the Report and Recommendation and finds that the Report and Recommendation is a correct statement of the law. The petition was filed untimely under 28 U.S.C. § 2244 and there is no basis to toll the statute of limitations. Petitioner's remaining basis for habeas relief must be dismissed because "[a] petition for federal habeas corpus relief based on an argument that state courts are incorrectly applying their own law [ ] is not a basis for relief." *Wansley v. Miss. Dept. of Corrections*, 769 F.3d 309 (5th Cir. 2014) (citation omitted).

Accordingly, this Court adopts the Report and Recommendation findings and conclusions as its own, grants the respondent's motion, and dismisses this case with prejudice. A separate Final Judgment will issue this day. Pursuant to *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), no certificate of appealability shall issue. *See Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000).

**SO ORDERED**, this the 24th day of September, 2015.

s/ Carlton W. Reeves  
UNITED STATES DISTRICT JUDGE